IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 31 OF 1988.

Sudam Balya Chikhalekar,
Occ: Agriculturist,
residing at Kalundre, Taluka:
Panvel, Dist. Raigad. ... Appellant.

Versus.

The Special Land Acquisition
Officer, Metro Centre No.1,
Panvel, Dist.Raigad. ... Respondent.

Shri N.V.Walawalkar, Senior Advocate i/by Shri G.H.Keluskar for the Appellant.

Shri K.K.Tated, A.G.P. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 18th March 2006.

ORAL JUDGMENT.

1. Heard Shri Walawalkar, the learned Senior Counsel appearing for the Appellant and the Shri Tated, A.G.P. for the Respondent.

2. By this Appeal, the Appellant has taken exception to the judgment and award dated 31st April 1987 passed by the learned Civil Judge,Senior Division, Raigad at Alibag. The Appellant is the original Claimant. The subject matter of this First Appeal is a

land at village Kalundre, Taluka Panvel, District Raigad totally admearusing 30 Ares i.e. 3000 square meters. The said land was notified for acquisition by a notification dated 3rd February 1970 issued under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act"). The acquisition was for the purpose of New Bombay Project. In response to the claim of the Appellant of Rs.20/- per square yard, the Special Acquisition Officer by award dated 28th July 1983 awarded market value of Rs.6/- per sq.meter for a portion of the acquired land and for the remaining portion, the market value was fixed at Rs.5/- per sq.meter. By the impugned Judgment and Award, the market value has been enhanced to Rs.8/-per square meter. The learned trial Judge granted statutory benefits to the Appellant under sections 23(1-A), 23(2) and section 28 of the said Act as amended by Act No.68 of 1994.

3. The learned Senior Counsel appearing for the Appellant pointed out that the lands in number of villages in Panvel Taluka including the lands in the village Kalundre were notified for acquisition by a notification under section 4 of the said Act which was issued on 3rd February 1970 for New Bombay Project. He pointed out that in case of a land in village Kalundre which is covered by the notification of the same date,

this Court had an occasion to consider the issue relating to the market value in First Appeal No.395 of 1984. The said First Appeal was decided by a Division Bench of this Court along with First Appeal No.382 of 1984 and other connected matters. The decision of the Division Bench is dated 3rd March 1987. He pointed out that the said decision has attained finality and in case of a similar land, the Division Bench fixed the market value at the rate of Rs.22.70 per sq.meter. He therefore submitted that in the present case the market value deserves to be fixed at the same rate. He invited my attention to the evidence on record.

4. Shri Tated, the learned A.G.P. appearing for the State pointed out that some amount will have to be deducted on account of the development charges as the acquired land was not developed on the date of section 4 notification. He submitted that the decision of the Division Bench cannot be applied to the facts of this case unless the lands are shown to be similar.

5. I have considered the submissions. The Claimant i.e. the Appellant stepped into the witness box. He has stated that the acquired land is close to a Petrol Pump, an Ice Factory and the Railway line. He stated that the residential quarters of the Oil and Natural Gas Commission employees are constructed adjacent to the

acquired land. The Appellant has examined an expert valuer by name Jeevan Narayan Kulkarni. He has also deposed about the location of the land. No evidence was led on behalf of the Respondent-State.

6. Turning to the decision of the Division Bench of this Court in First Appeal No.395 of 1984, it is observed by this Court that the land subject of the said appeal abuts the Bombay-Pune Road and was already converted for non-agricultural use. In fact prior to the date of notification under section 4 of the said Act, it was already leased out to the Indian Oil Corporation. In the present case, the evidence of the Appellant discloses that on the date of acquisition it was an agricultural land. The Appellant has disclosed that the distance between his land and Bombay-Pune Highway is 3/4th of a furlong. Thus the acquired land which is the subject matter of this Appeal is very close to the Bombay-Pune Highway. The area of the land subject matter of the First Appeal No.395 of 1984 appears to be around 3000 sq.meters. Thus in all respects, except the fact that the land subject matter of the First Appeal No.395 of 1984 was already a non-agricultural land, both the lands are more or less comparable. It is not in dispute that the order of the Division Bench has attained finality.

7. Considering the location of the land it is obvious that the land had potential for non-agricultural use. It appears that the Division Bench in the aforesaid case did not deduct any amount on account of development charges as the land was already converted into a non-agricultural use. In the present case on the relevant date the acquired land was an agricultural land and therefore, certain amount will have to be deducted by way of development charges.

8. Another Division Bench of this Court decided a group of First Appeals (First Appeal No.875 of 1985 and other connected Appeals) where the acquisition was on the basis of the notification dated 3rd February 1970 for New Bombay Project and the lands subject matter of the said appeals are from various villages in Panvel Taluka, District Raigad. In the said decision dated 16th March 2000 the Division Bench held that 10% of the market value is required to be deducted on account of the development charges. In the present case considering the facts and circumstances of the case, even if rate of Rs.22.50 per sq.meter as fixed by the Division Bench has to be applied, a deduction of Rs.2.50 per sq.meter will have to be made on account of the development charges.

9. Accordingly the First Appeal must partly succeed and the market value will have to be fixed at the rate of Rs.20/- per sq.meter. As held by the Reference Court the Appellant will be entitled to the statutory benefits under sections 23(1-A), 23(2) and 28 of the said Act.

10. Hence the following order is passed:

(i) The impugned Judgment and Award is modified to the extent that the Appellant shall be entitled to compensation in respect of the acquired land at the market rate of Rs.20/- per sq.meter. The Appellant will also be entitled to all the statutory benefits as directed by the Reference Court along with proportionate costs.

(ii) Necessary calculation regarding the amount payable to the Appellant will be made by the Reference Court and the said exercise be completed within a period of four months from the date of receipt of writ of this Court.

(iii) The Appeal is partly allowed in the above terms.

(iv) The Appellant is entitled to proportionate costs all throughout.

(v) This judgment will be acted upon only after the deficit court fee is paid by the Appellant and the decree will be drawn only after payment of deficit Court fee.

Judge.